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**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF NEW JERSEY**

JENNIFER KIRBY,)	Case No.:
)	
Plaintiff)	COMPLAINT AND DEMAND FOR
)	JURY TRIAL
v.)	
)	
VERDE ENERGY USA, INC.,)	(Unlawful Communications Practices)
)	
Defendant)	

COMPLAINT

JENNIFER KIRBY (“Plaintiff”), by and through her attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against VERDE ENERGY USA, INC. (“Defendant”):

INTRODUCTION

1. Plaintiff’s Complaint is based on the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.*

JURISDICTION AND VENUE

2. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331. See Mims v. Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).

3. Defendant conducts business in the State of New Jersey and as such, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

PARTIES

5. Plaintiff is a natural person residing in Trenton, New Jersey 08638.

6. Plaintiff is a “person” as that term is defined by 47 U.S.C. § 153(39).

7. Defendant is a corporation that has its office located in Norwalk, Connecticut 06851.

8. Defendant is a “person” as that term is defined by 47 U.S.C. §153(39).

9. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

10. Plaintiff has a cellular telephone number that she has had for more than one year.

11. Plaintiff has only used this number as a cellular telephone number.

12. The phone number has been assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls.

13. Plaintiff never provided permission to Defendant to call her cellular telephone number or to contact her regarding any goods or services offered by Defendant.

14. Beginning in early June 2015, and continuing through August 13, 2015, Defendant repeatedly called Plaintiff on her cellular telephone.

15. When placing these calls to Plaintiff on her cellular telephone, Defendant used an automatic telephone dialing system and automatic and/or pre-recorded messages.

16. Plaintiff knew Defendant used an automatic dialing system and/or pre-recorded message because an automated message would play during these communications.

17. Defendant’s calls were for marketing purposes and not made for “emergency purposes.”

1 18. During some calls Defendant requested to speak with Plaintiff and during other
2 calls Defendant's representatives would ask for a third party.

3 19. Plaintiff told Defendant to stop calling, and Defendant's representative advised
4 her on one occasion that a note was "put in the computer."

5 20. Defendant heard and acknowledged Plaintiff's revocation of consent and demand
6 to stop calling her cellular telephone number.

7 21. Despite the above, Defendant persisted in calling Plaintiff on her cellular
8 telephone for several weeks.

9 22. The Federal Communications Commission has recognized a right to revoke
10 consent. See In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of
11 1991 Am. Ass'n of Healthcare Admin. Mgmt. Am. Bankers Ass'n Coal. of Mobile Engagement
12 Providers Consumer Bankers Ass'n Direct Mktg. Ass'n Paul D. S. Edwards Milton H. Fried, Jr.,
13 & Richard Evans Glide Talk, Ltd. Global Tel*link Corp. Nat'l Ass'n of Attorneys Gen. Prof'l
14 Ass'n for, CG02-278, 2015 WL 4387780, at *21 (OHMSV July 10, 2015).

15
16
17 **DEFENDANT VIOLATED THE**
18 **TELEPHONE CONSUMER PROTECTION ACT**

19 23. Plaintiff incorporates the forgoing paragraphs as though the same were set forth at
20 length herein.

21 24. Plaintiff has a cellular telephone number that she has had for over a year.

22 25. Plaintiff has only used this number as a cellular telephone number.

23 26. The phone number has been assigned to a cellular telephone service for which
24 Plaintiff incurs a charge for incoming calls.

CERTIFICATION PURSUANT TO L.CIV.R.11.2

I hereby certify pursuant to Local Civil Rule 11.2 that this matter in controversy is not subject to any other action pending in any court, arbitration or administrative proceeding.

RESPECTFULLY SUBMITTED,

DATED: September 2, 2015

KIMMEL & SILVERMAN, P.C.

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